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# HOUSE BILL No. 1280

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-34-1-4.

**Synopsis:** Probable cause hearings. Allows a defendant to file a motion to dismiss a criminal indictment or information on the grounds that the indictment or information was issued without probable cause to believe that an offense was committed. Provides for a hearing on the motion.

**Effective:** July 1, 2001.

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January 9, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

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## HOUSE BILL No. 1280



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 35-34-1-4 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) The court may,
- 3 upon motion of the defendant, dismiss the indictment or information
- 4 upon any of the following grounds:
- 5 (1) The indictment or information, or any count thereof, is
- 6 defective under section 6 of this chapter.
- 7 (2) Misjoinder of offenses or parties defendant, or duplicity of
- 8 allegation in counts.
- 9 (3) The grand jury proceeding was defective.
- 10 (4) The indictment or information does not state the offense with
- 11 sufficient certainty.
- 12 (5) The facts stated do not constitute an offense.
- 13 (6) The defendant has immunity with respect to the offense
- 14 charged.
- 15 (7) The prosecution is barred by reason of a previous prosecution.
- 16 (8) The prosecution is untimely brought.
- 17 (9) The defendant has been denied the right to a speedy trial.



1 (10) There exists some jurisdictional impediment to conviction of  
2 the defendant for the offense charged.

3 (11) **The indictment or information was issued without**  
4 **probable cause to believe that an offense was committed.**

5 (12) Any other ground that is a basis for dismissal as a matter of  
6 law.

7 (b) Except as otherwise provided, a motion under this section shall  
8 be made no later than:

9 (1) twenty (20) days if the defendant is charged with a felony; or

10 (2) ten (10) days if the defendant is charged only with one (1) or  
11 more misdemeanors;

12 prior to the omnibus date. A motion made thereafter may be summarily  
13 denied if based upon a ground specified in ~~subdivision~~ **subsection**  
14 (a)(1), (a)(2), (a)(3), (a)(4), ~~or~~ (a)(5), ~~of this section~~ **or (a)(11)**. A  
15 motion to dismiss based upon a ground specified in ~~subdivision~~  
16 **subsection** (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), or ~~(a)(11)~~ **of this**  
17 **section (a)(12)** may be made or renewed at any time before or during  
18 trial. A motion to dismiss based upon lack of jurisdiction over the  
19 subject matter may be made at any time.

20 (c) Upon the motion to dismiss, a defendant who is in a position  
21 adequately to raise more than one (1) ground in support thereof shall  
22 raise every ground upon which he intends to challenge the indictment  
23 or information. A subsequent motion based upon a ground not properly  
24 raised may be summarily denied. However, the court, in the interest of  
25 justice and for good cause shown, may entertain and dispose of such a  
26 motion on the merits.

27 (d) Upon the motion to dismiss, the court shall:

28 (1) overrule the motion to dismiss;

29 (2) grant the motion to dismiss and discharge the defendant; or

30 (3) grant the motion to dismiss and deny discharge of the  
31 defendant if the court determines that the indictment or  
32 information may be cured by amendment under section 5 of this  
33 chapter and the prosecuting attorney has moved for leave to  
34 amend.

35 **The court may rule on a motion based on a ground specified in**  
36 **subsection (a)(11) only after conducting a hearing on the motion in**  
37 **which the defendant has an opportunity to present evidence and**  
38 **cross-examine witnesses.** If the court grants the motion under  
39 subdivision (3) and grants the prosecuting attorney leave to amend, any  
40 prior order imposing conditions of release pending trial shall stand  
41 unless otherwise modified or removed by order of the court.

42 (e) If the court grants a motion under subsection (a)(3) and the

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1 prosecuting attorney informs the court on the record that the charges  
2 will be refiled within seventy-two (72) hours by information:  
3 (1) the court may not discharge the defendant; and  
4 (2) any prior order concerning release pending trial remains in  
5 force unless it is modified or removed by the court.  
6 (f) An order of dismissal does not, of itself, constitute a bar to a  
7 subsequent prosecution of the same crime or crimes except as  
8 otherwise provided by law.  
9 SECTION 2. [EFFECTIVE JULY 1, 2001] **IC 35-34-1-4, as**  
10 **amended by this act, applies to all informations and indictments**  
11 **filed in a court after June 30, 2001, regardless of when the offense**  
12 **occurred.**

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